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10/761,701	01/21/2004	C. Allen Brown	23060-RA	3358
30184	7590	09/13/2005	EXAMINER	
MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.			COHEN, AMY R	
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SUITE 310			PAPER NUMBER	
ATLANTA, GA 30339			2859	

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/761,701

Applicant(s)

BROWN, C. ALLEN

Examiner

Amy R. Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amendment and RCE 8/26/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 4-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 23 is objected to because of the following informalities:

Claim 23, lines 3-5 have already been claimed in claim 7.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 5-8, 10-14, 16, 18, 21, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley (U. S. Patent No. 2,495,974) in view of Canalle (U. S. Patent No. 6,571,487).

Regarding claims 1, 2, 5, 6, 18: Kelley discloses an apparatus (Fig. 1) for measuring distances, said apparatus comprising a wheel (3,5) comprising incremental line markers for measuring distances (Figs. 5, 6, 8, 9); a housing (1) that functions as a layout tool (Fig. 1) selected from the group consisting of a straight edge, a gauging block, a ruler, or a combination thereof, wherein said housing further comprises a truncated flat front wall (9), said front wall enabling said housing to rest against a wall surface (Figs. 1 and 2).

Kelley discloses the apparatus wherein said wheel comprises a circumference, said circumference selected from the group consisting of a 12-inch circumference (Figs. 8 and 9), a

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16-inch circumference, a nineteen and two-tenths-inch circumference, and a 24-inch circumference (Col 4, lines 5-21).

Kelley discloses the apparatus wherein said housing comprises a first sidewall (11, 34, the two faces of the device, one seen in Fig. 1 and the face opposite) adjacently disposed to a second sidewall at an angle selected from a group consisting of 45 degrees (13) and 90 degrees (all other sidewalls, not 13, are at 90 degrees from each other).

Kelley does not disclose the apparatus comprising a squaring lip, wherein said squaring lip is disposed on said housing; wherein said housing comprises a sidewall comprising a length, said length selected from a group consisting of 1 ½ inches, 3 inches, 3 ½ inches, and 5 ½ inches; wherein said squaring lip comprises a string groove.

Canalle discloses an apparatus (10) for measuring distances, said apparatus comprising: a housing (10) that functions as a layout tool, said layout tool selected from a group consisting of a straight edge, a gauging block, a ruler, or a combination thereof (Col 1, line 60-Col 2, line 56), and a squaring lip (26, 28, 30); wherein said housing comprises a sidewall comprising a length, said length selected from a group consisting of 1 ½ inches, 3 inches, 3 ½ inches, and 5 ½ inches (Col 3, lines 22-38); wherein said squaring lip is disposed on said housing (Figs. 1-6); wherein said squaring lip comprises a string groove (29, 88).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Kelley to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

Regarding claims 7, 8, 10, 11, 21, 23: Kelley discloses an apparatus (Fig. 1) for measuring distances, said apparatus comprising: a wheel (3, 5) comprising incremental line markers for measuring distances (Figs. 5, 6, 8, 9); and a housing (1) comprising edges dimensioned and configured to correspond to the sizes and angles most often encountered during framing (Fig. 1, Col 1, lines 5-45 and Col 3, lines 5-19), wherein said housing further comprises a truncated flat front wall (9), said front wall enabling said housing to rest against a wall surface (Figs. 1 and 2).

Kelley discloses the apparatus wherein said wheel comprises a circumference, said circumference selected from a group consisting of a 12-inch circumference (Figs. 8 and 9), a 16-inch circumference, a nineteen and two-tenths-inch circumference, and a 24-inch circumference (Col 4, lines 5-21).

Kelley discloses the apparatus wherein said housing comprises a first sidewall (11, 34, the two faces of the device, one seen in Fig. 1 and the face opposite) adjacently disposed to a second sidewall at an angle selected from a group consisting of 45 degrees (13) and 90 degrees (all other sidewalls, not 13, are at 90 degrees from each other).

Kelley discloses the apparatus wherein said housing functions as a gauging block (Fig. 1), and wherein said front wall is disposed perpendicular to a workpiece surface when said wheel of said apparatus is disposed upon the workpiece (Fig. 1).

Kelley does not disclose the apparatus comprising a squaring lip, wherein said squaring lip is disposed on said housing; wherein said housing comprises a sidewall comprising a length, said length selected from a group consisting of 1 ½ inches, 3 inches, 3 ½ inches, and 5 ½ inches; wherein said squaring lip comprises a string groove.

Canalle discloses an apparatus (10) for measuring distances, said apparatus comprising: a housing (10) that functions as a layout tool, said layout tool selected from a group consisting of a straight edge, a gauging block, a ruler, or a combination thereof (Col 1, line 60-Col 2, line 56), and a squaring lip (26, 28, 30); wherein said housing comprises a sidewall comprising a length, said length selected from a group consisting of 1 ½ inches, 3 inches, 3 ½ inches, and 5 ½ inches (Col 3, lines 22-38); wherein said squaring lip is disposed on said housing (Figs. 1-6); wherein said squaring lip comprises a string groove (29, 88).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Kelley to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

Regarding claims 12-14, 16: Kelley discloses a method for measuring distances, said method comprising the steps of: obtaining an apparatus (Fig. 1) for measuring distances, said apparatus comprising a wheel (3, 5) comprising incremental line markers for measuring distances (Figs. 5, 6, 8, 9); a housing that functions as a straight edge (Figs. 1, 5, 6, 8, 9, Col 1, lines 5-45 and Col 3, lines 5-19), wherein said housing further comprises a truncated flat front wall (9), said front wall enabling said housing to rest against a wall surface (Figs. 1 and 2).

Kelley discloses the method comprising the step of placing said wheel on a starting point on a surface requiring measurement, and rolling said wheel over the surface (Col 1, line 42-Col 2, line 16 and Col 4, lines 52-72).

Kelley discloses the method comprising the step of determining the distance traveled by said wheel from the starting point, wherein the distance is ascertained by said incremental line markers on said wheel (Col 1, line 42-Col 2, line 16, and Col 4, line 52-Col 5, line 19).

Kelley discloses the method comprising the step of utilizing said housing to measure the sizes and angles most often encountered during framing (Col 1, line 42-Col 2, line 16, and Col 4, line 52-Col 5, line 19).

Kelley does not disclose the method comprising a squaring lip.

Canalle discloses a method for measuring distances, said method comprising the steps of: obtaining an apparatus (10) for measuring distances, said apparatus comprising a housing (10) that functions as a straight edge (Col 1, line 60-Col 2, line 56) and a squaring lip (26, 28, 30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Kelley to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

4. Claims 4, 9, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley and Canalle as applied to claims 1, 2, 5-8, 10-14, 16, 18, 21, 23 above, and further in view of Hodges (U. S. Patent No. 6,408,529).

Kelley and Canalle disclose the apparatus and method as described above in paragraph 3.

Kelley and Canalle do not disclose the apparatus wherein a sidewall comprises measuring notches for measuring linear distances; wherein said housing comprises plumb lines and roof pitches, and wherein said plumb lines comprise markings utilized to level said apparatus on a

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workpiece, and wherein said roof pitched comprise markings utilized to frame rafters and similar building components.

Hodges discloses an apparatus wherein a sidewall comprises measuring notches for measuring linear distances (Col 2, lines 24-33, lines 55-65, Col 5, lines 21-31); wherein said housing comprises plumb lines and roof pitches (Col 1, line 59-Col 2, line 12, Col 4, lines 48-67), and wherein said plumb lines comprise markings utilized to level said apparatus on a workpiece (Col 1, line 59-Col 2, line 12), and wherein said roof pitched comprise markings utilized to frame rafters and similar building components (Col 4, lines 48-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Kelley and Canalle to include measuring notches and plumb line and roof pitches, as taught by Hodges, so that a user could efficiently measure and layout material commonly used in carpentry, roofing and framing (Hodges, Col 1, line 59-Col 2, line 12).

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley and Canalle as applied to claims 1, 2, 5-8, 10-14, 16, 18, 21, 23 above, and further in view of Pearson (U. S. Patent No. 3,046,884).

Kelley and Canalle disclose the apparatus and method as described above in paragraph 3 and wherein interval distances are indicated by an audible sound and by said incremental line markers on said wheel (Kelley, Col 1, line 42-Col 2, line 16 and Col 4, line 52-Col 5, line 19).

Kelley and Canalle do not disclose the apparatus and method specifically comprising the step of marking the surface at selected intervals indicated by said incremental line markers on said wheel.



Pearson discloses an apparatus and method specifically comprising the step of marking the surface at selected intervals indicated by said incremental line markers on said wheel (Figs. 1 and 4 and Col 1, lines 7-61).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus and method of Kelley and Canalle to include marking distances at the selected intervals, so that a user would be able to easily recall the number of times the incremental line markers on the wheel made a revolution, in order to more easily indicate the total distance traveled.

6. Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley and Canalle as applied to claims 1, 2, 5-8, 10-14, 16, 18, 21, 23 above, and further in view of Presley (U. S. Patent No. 3,163,941).

Kelley and Canalle disclose the apparatus as described above in paragraph 3, and wherein said housing comprises an enlarged cutout, wherein said enlarged cutout permits a large portion of said wheel to be exposed for contacting a workpiece (Kelley, Figs. 1, 4, and 10, the entire bottom of the housing comprises an enlarged cutout, permitting a larger portion of the wheel to be exposed for contacting the workpiece).

Kelley and Canalle do not disclose the apparatus wherein said enlarged cutout provides an additional viewing area for viewing said incremental line markers of said wheel.

Presley discloses an apparatus for measuring distances, said apparatus comprising: a wheel (22) comprising incremental line markers (26) for measuring distances and a housing (10); wherein said housing comprises an enlarged cutout (bottom of housing which ends at sides 18a, 18b is the enlarged cutout, Figs. 1-3, 6), wherein said enlarged cutout permits a large portion of

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said wheel to be exposed for contacting a workpiece (Fig. 6); and wherein said enlarged cutout provides an additional viewing area for viewing said incremental line markers of said wheel (Fig. 6, Col 2, line 70-Col 3, line 19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housing of Kelley and Canalle to lower the wheels within the housing in order to provide additional viewing of the incremental line markers, as taught by Presley, so that a user could accurately align the apparatus with a zero mark for measuring along a surface (Presley, Col 4, lines 20-55).

7. Claims 1, 7, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Presley in view of Canalle.

Regarding claims 1 and 17: Presley discloses an apparatus for measuring distances (Fig. 1), said apparatus comprising: a wheel (22) comprising incremental line markers for measuring distances (Figs. 1 and 2); a housing (10) that functions as a layout tool, said layout tool selected from the group consisting of a straight edge, a gauging block, a ruler, or a combination thereof (Fig. 1), wherein said housing further comprises a truncated flat front wall (18a, 18b), said wall enabling said housing to rest against a wall surface (Fig. 6); wherein said housing comprises a nail hole (50).

Presley does not disclose the apparatus comprising a squaring lip.

Canalle discloses an apparatus (10) for measuring distances, said apparatus comprising: a housing (10) that functions as a layout tool, said layout tool selected from a group consisting of a straight edge, a gauging block, a ruler, or a combination thereof (Col 1, line 60-Col 2, line 56), and a squaring lip (26, 28, 30).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Presley to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

Regarding claims 7 and 20: Presley discloses an apparatus for measuring distances (Fig. 1), said apparatus comprising: a wheel (22) comprising incremental line markers for measuring distances (Figs. 1 and 2); a housing (10) comprising edges dimensioned and configured to correspond to the sizes and angles most often encountered during framing, wherein said housing further comprises a truncated flat front wall (18a, 18b), said front wall enabling said housing to rest against a wall surface (Fig. 6); wherein said housing comprises a nail hole (50).

Presley does not disclose the apparatus comprising a squaring lip.

Canalle discloses an apparatus (10) for measuring distances, said apparatus comprising: a housing (10) that functions as a layout tool, said layout tool selected from a group consisting of a straight edge, a gauging block, a ruler, or a combination thereof (Col 1, line 60-Col 2, line 56), and a squaring lip (26, 28, 30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Presley to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

***Response to Arguments***

8. Applicant's arguments filed August 26, 2005 have been fully considered but they are not persuasive.

Regarding Applicant's arguments that Kelley does not teach a "truncated flat front wall," Examiner disagrees. Firstly, Applicant has not defined a "front wall" in terms of any other wall of the housing; therefore, any wall of a housing may be considered a "front wall." In this case, Applicant argues that wall 13 of Kelley is not truncated because it is angularly disposed. Examiner contends that wall 13 is not necessarily the "front wall." Kelley's wall 9 is truncated and will enable the housing to rest against a wall surface (and will also be perpendicular to a workpiece surface, as claimed in claim 23). Furthermore, wall 34, and each of the faces of Kelley will enable the housing to rest against a wall surface.

Regarding Applicant's arguments that Kelley does not teach notches, Examiner has withdrawn this rejection in favor of the new rejection found in paragraph 4 above.

Regarding Applicant's arguments that Kelley and Canalle do not teach a nail hole, Examiner has withdrawn this rejection in favor of the new rejection found in paragraph 7 above, wherein claims 1, 7, 17, and 20 are rejected in view of Presley and Canalle.

Regarding Applicant's arguments that Examiner has misconstrued the notch and marking point of Kelley and Canalle since they are not "u-shaped channels," Examiner reminds Applicant that the only structure claimed is "said squaring lip comprises a string groove." There are no structural limitations claimed regarding the string groove or its intended use (Applicant is also reminded that intended use is not given patentable weight in apparatus claims).

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Regarding Applicant's arguments that Kelley comprises more than one wheel and that Kelley requires two wheels to function, the arguments are not persuasive. Applicant is not claiming the function of the apparatus nor is Applicant claiming only one wheel, therefore, the two wheels of Kelley and Canalle meet the structural limitations of a wheel and a housing as claimed.

Regarding Applicant's arguments that the large windows permit an operator of the Applicant's invention to control the movement by applying finger pressure to the wheel portion, thereby breaking rotation, and further provides a support purchase point, the arguments are not persuasive. Applicant does not claim controlling by applying finger pressure nor does Applicant claim a purchase point, both of which appear to be intended use. Applicant claims that the cutout permit a large portion of the wheel to be exposed for contacting a workpiece, and provide additional viewing area, both of which are satisfied by the apparatus of Kelley, Canalle, and Presley. Examiner also notes that "enlarged" is a relative term, which is not clearly defined in the claim language and therefore, can be interpreted broadly.

### *Conclusion*

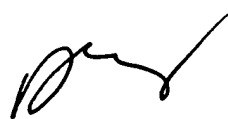
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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ARC  
September 7, 2005



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